

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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L.J. ZUCCA, INC.,

Plaintiff,

v.

ALLEN BROS. WHOLESALE  
DISTRIBUTORS INC. *et al.*,

Defendants.

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C.A. No. 1:07-CV-2 (JJF)

**DEFENDANT COOPER-BOOTH WHOLESALE COMPANY'S  
MOTION TO CERTIFY FOR INTERLOCUTORY APPEAL  
THE COURT'S ORDER OF JULY 29, 2008**

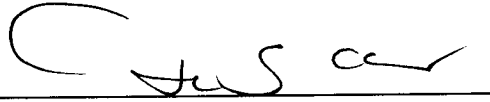
Pursuant to 28 U.S.C. § 1292(b), Defendant Cooper-Booth Wholesale Company, by and through its undersigned counsel, hereby moves this Court to certify for immediate interlocutory appeal its Order of July 29, 2008, so the Third Circuit may address whether, in view of the Supreme Court's recent opinion in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 127 S.Ct. 2705 (2007), proof that a conspiracy among competitors exists is a legal prerequisite to finding the Delaware Unfair Cigarette Sales Act, 6 *Del. C.* §§ 2601 – 2608, preempted by Section 1 of the Sherman Act, 15 U.S.C. § 1.

The factual and legal grounds for this Motion are set forth in Defendant Cooper-Booth Company's Brief in Support of Motion to Certify for Interlocutory Appeal the Court's Order of July 29, 2008, filed contemporaneously herewith. Oral argument is requested.

Respectfully submitted,

**BLANK ROME LLP**

Dated: August 7, 2008

A handwritten signature in black ink, appearing to read 'Christine S. Azar', is written over a horizontal line.

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Cooper-Booth Wholesale Company

**CERTIFICATE OF SERVICE**

I, Christine S. Azar, Esquire, certify that on August 7, 2008, I served a copy of  
**Defendant Cooper-Booth Company's Motion to Certify for Interlocutory Appeal the  
Court's Order of July 29, 2008** upon the following counsel in the manner indicated below:


**VIA ELECTRONIC SERVICE**

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**ORDER**

THIS MATTER having come before the Court on Defendant Cooper-Booth Wholesale Company's Motion to Certify for Interlocutory Appeal the Court's Order of July 29, 2008; and the Court having considered the moving and opposing papers, argument of counsel, and having placed its findings of fact and conclusions of law on the record;

IT IS on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, **ORDERED** that:

1. Defendant Cooper-Booth Wholesale Company's motion is **GRANTED**.
2. This Court's Order of July 29, 2008 is hereby on this date supplemented to state that it involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal of the Order may materially advance the ultimate termination of this litigation.
3. The following question is hereby certified pursuant to 28 U.S.C. § 1292(b) to the United States Court of Appeals for the Third Circuit: Whether in view of the Supreme Court's recent opinion in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 127 S.Ct. 2705 (2007), proof that a conspiracy among competitors exists is a legal prerequisite to finding the Delaware

Unfair Cigarette Sales Act, 6 Del. C. §§ 2601 – 2608, preempted by Section 1 of the Sherman Act, 15 U.S.C. § 1.

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HON. JOSEPH J. FARNAN, JR.